IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.378 OF 1993

DATE OF DECISION: JULY 03, 2007

Ram Kumar

.....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. G. S. Bawa, Advocate,
for the petitioner.

Mr. S. K. Hooda, Sr.DAG, Haryana,
for the State.

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RANJIT SINGH, J.

The petitioner was tried for an offence under Section 16(1)(a)(I) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") and after conviction, he was orderer to suffer RI for 9 months and to pay a fine of Rs.1000/-. The petitioner was also directed to undergo RI for a period of three months in case of default of payment of fine.

The petitioner was intercepted by Food Inspector Balwan Singh on 23.12.1980 near Bus Stand, Sonepat, while he was in possession of 108 liters

of unindicated milk meant for public sale contained in 6 drums. Dr.Baldev Dutta, Deputy Chief Medical Officer and one Shorry Lal were present at the time of the interception. After disclosing his identity, Food Inspector purchased 660 mls. of milk on payment after properly mixing the contents of one drum. The milk so purchased was divided into three equal parts and as per the procedure, put in three clean and dry bottles. 16 drops of 40% formaline were added as preservative and then these bottles were properly packed and sealed. After following the required procedure, the Food Inspector sent one sealed bottle alongwith Form No.VIII to Public Analyst. Remaining two bottles were deposited with the Local Health Authority alongwith copies of memorandum in form VIII. After analysis, the Public Analyst gave report that the milk was deficient in fat by 5% and, thus, was found deficient by 13% of the minimum prescribed standard. The petitioner was accordingly prosecuted for an offence as afore-mentioned, leading to his conviction and award of the sentence. The petitioner remained unsuccessful in his appeal, which was dismissed on 26.5.1993. He accordingly filed the present revision, which stands admitted since 17.6.1993.

Mr.G.S.Bawa, learned counsel appearing for the petitioner has not raised any plea on merits. He, however, submits that the incident is of the year 1980 and the petitioner had faced trial for a period of almost 10 years before being convicted by the Chief Judicial Magistrate on 24.8.1990. His appeal was dismissed on 26.5.1993, against which he filed the present revision petition, which is pending before this Court since 17.6.1993. Submission is that it would sound rather unreasonable after 27 years of the incident to

make the petitioner to undergo this sentence. No doubt, the petitioner has undergone a prolonged trial and has faced the agony for nearly 27 years and making him to undergo the sentence at this belated stage, may not look just and reasonable and may sound harsh. However, as pointed out by the State counsel, the provisions of Section 16(1)(a) of the Act, which prescribe minimum period of six months sentence may seem to be stand in the way of reduction of sentence or for the grant of benefit of probation to the petitioner.

To over come this hurdle, learned counsel for the petitioner has drawn my attention to ***Ganesh Maity Vs. U.T., Chandigarh,*** 2003 (1) R.C.R. (Criminal) 418, ***Krishan Kumar Vs. State (U.T. Chandigarh),*** 2005 (1) R.C.R. (Criminal) 975 and ***Surjit Singh Vs. State (Chandigarh U.T.),*** 2005 (3) R.C.R. (Criminal) 583 to say that though minimum sentence is prescribed under the Act, yet the same can be reduced, considering the long pendency of such proceedings.

Section 16 of the Act provides that the offence thereunder is punishable with imprisonment for a term, which shall not be less than six months. Section 20AA of the said Act further provide that the provisions of the Probation of Offenders Act and Section 360 of the Code of Criminal Procedure shall not apply to a person convicted for an offence under this Act, unless he is under 18 years of age. It can not be denied that the petitioner in this case has suffered a prolonged agony while facing criminal proceedings spanning over a period of 27 years. He, thus, concededly has suffered considerable mental agony while facing prosecution and the sentence staring at him. Would not this reveal violation of his life and

liberty guaranteed to him under Article 21 of the Constitution of India? No person shall be deprived of his life or personal liberty except according to the procedure established by law, says Article 21 of the Constitution. This, Article, earlier construed narrowly as guarantee against executive action unsupported by law has now been given new dimensions by the Courts to say that it would impose limitation upon law making as well. Thus to pass the test of being a valid law/validly legislated law, it has to be a reasonable, just and fair as well in addition to be being a validly legislated law. Assurance of a fair trial and a speedy conclusion of criminal trial is now recognized as part of the right guaranteed under Article 21 of the Constitution of India. Reference here can be made to ***Hussainara Khatoon and others Vs. Home Secretary, State of Bihar, Patna,*** AIR 1979 SC 1360 and ***Kadra Pahadiya and others Vs. State of Bihar,*** AIR 1982 SC 1167. Seen in this context, delay in disposal of criminal prosecution, which in the present case is nearly 27 years, would certainly be a valid consideration for passing any order in regard to the sentence in the present case. Such a course was adopted in the case of Ganesh Maity (supra). In the case of Krishan Kumar (supra), the accused was directed to be released on probation, though he was of 19 years of age, considering the fact that he had faced trial for 19 years. Similarly, in the case of Surjit Singh (supra), the sentence awarded to the accused under Section 16 of the Act was reduced to a period already undergone on the ground that the accused had faced trial for nearly 20 years.

Following the principle enunciated above, while dismissing this revision, the sentence awarded to the petitioner is

reduced to the period already undergone. The bail bonds furnished by the petitioner shall stand discharged. The fine, if not already deposited, would be deposited by the petitioner. In case of default of payment of fine, the petitioner would undergo RI for a period of three months.

July 03, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**